



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2005

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2005-03658

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222035.

The Texas Department of Insurance (the "department") received a request for "the list, or lists, including names and addresses, policy numbers and claim numbers, of claimants who filed claims against U.S. Auto, et al, whose claims were rescinded by U.S. Auto, et al." You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. Additionally, while the department takes no position with regard to the public availability of the remaining requested information, you believe that this request for information implicates the proprietary interests of State and County Mutual Fire Insurance Company ("State and County") and U.S. Auto Insurance Services, Inc. ("U.S. Auto") You state, and provide documentation showing, that you notified State and County and U.S. Auto of the request and of each company's right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have considered the exceptions you claim and the arguments of the third

parties and reviewed the submitted representative sample of the requested information.¹ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The third parties argue that a portion of the submitted information is excepted from public disclosure under section 552.101 in conjunction with the Gramm-Leach-Bliley Act (the "GLB Act").² *See* 15 U.S.C. § 6801 *et seq.* The Federal Financial Modernization Act, also known as the GLB Act, became law in November 1999. The purpose of the GLB Act was to promote competition in the financial services industry. *See* H.R. Conf. Rep. No. 106-434, at 245 (1999), *reprinted in* 1999 U.S.C.C.A.N. 245, 245. Reflecting Congressional concern regarding the dissemination of consumer's personal financial information, the GLB Act provides certain privacy protections "to protect the security and confidentiality of [consumers'] nonpublic personal information." 15 U.S.C. § 6801. The statute defines nonpublic personal information ("NPI") as "personally identifiable financial information ["PIFI"] - (i) provided by a consumer to a financial institution; (ii) resulting from any transaction with the consumer or any service performed for the consumer; or (iii) otherwise obtained by the financial institution." 15 U.S.C. § 6809(4)(A). The statute further defines NPI as "any list, description, or other grouping of consumers . . . that is derived using any [NPI]." 15 U.S.C. § 6809(4)(C)(i). Federal Regulations define "PIFI" as

any information: (i) [a] consumer provides to [a regulated financial institution] to obtain a financial product or service . . . ; (ii) [a]bout a consumer resulting from any transaction involving a financial product or service between [a regulated financial institution] and a consumer; or (iii) [a regulated financial institution] otherwise obtain[s] about a consumer in connection with providing a financial product or service to that consumer."

16 C.F.R. § 313.3(o)(1). Additional protection is provided to consumers by limitations placed on the reuse of PIFI obtained from a financial institution by a nonaffiliated third party. Section 6802(c) provides as follows:

. . . a nonaffiliated third party that receives from a financial institution [NPI] under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² U.S. Auto explains that it is a managing general agency for State and County. State and County asserts all exceptions and supporting arguments set forth by U.S. Auto as its own.

third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

15 U.S.C. § 6802(c). Additionally, section 22.15 of title 28 of the Texas Administrative Code provides as follows:

(e) If a covered entity discloses nonpublic personal financial information to a nonaffiliated third party under an exception in this title, the third party may disclose and use that information only as follows:

(1) the third party may disclose the information to the covered entity's affiliates;

(2) the third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) the third party may disclose and use the information pursuant to an exception in this title in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

28 T.A.C. § 22.15(e). The third parties advise that U.S. Auto is a financial institution for purposes of the GLB Act. *See* 15 U.S.C. § 6809(3)(A), 12 U.S.C. § 1843(k)(4)(B) (insurance company is financial institution). Further, the department is a nonaffiliated third party for purposes of the GLB Act.³ *See* 15 U.S.C. § 6809(5) ("nonaffiliated third party" means any entity that is not affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution).

The information at issue consists of lists of claimants, and each list includes the claim number, policy number of the insured, the claimant's address, and the claim amount that was either paid to the claimant or that is outstanding. The third parties advise that the information at issue consists of PIFI that was provided to U.S. Auto for the purpose of obtaining insurance, and is also information resulting from transactions with insureds or services performed for insureds by a regulated financial institution. *See* 15 U.S.C. § 6809(4)(A), 16 C.F.R. § 313.3(o)(1). The third parties further advise that the information at issue was derived from insureds' policy numbers, which are nonpublic account numbers.

³ We note that in order to implement the GLB Act, section 601.051 of the Insurance Code authorizes the Commissioner of Insurance to promulgate rules that govern the treatment of nonpublic personal financial information about individuals by covered entities. *See* 15 U.S.C. § 6805; Ins. Code § 601.051. The department's rules are found at subchapter A of chapter 22 of title 28 of the Texas Administrative Code. *See* 28 T.A.C. § 22.1 *et seq.* Pursuant to these rules, the department is restricted in the use or disclosure of nonpublic personal financial information that it receives from a covered entity. The rules prohibit the department from disclosing such information to the public. *See* 28 T.A.C. §§ 22.15(e), 22.19(a).

See 15 U.S.C. § 6809(4)(C)(i). Finally, the department and the third parties advise that the information at issue was provided to the department, a nonaffiliated third party, by the third parties. See 15 U.S.C. § 6809(5). Because the department obtained NPI from U.S. Auto, a financial institution, the department is prohibited by section 6802(c) and section 22.15(e) of the Texas Administrative Code from releasing the information we have marked, and this information must be withheld from disclosure under section 552.101 in conjunction with the GLB Act.⁴

The department argues that portions of the remaining submitted information, which reflects claim amounts paid pursuant to automobile property and casualty claims, are excepted from disclosure under section 552.101 of the Government Code in conjunction with the doctrine of common law privacy. Section 552.101 encompasses the common law right to privacy, which protects information if it is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy protects certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of state employees' personnel records), 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Upon review, we agree that the department must withhold the information at issue, which we have marked, under section 552.101 of the Government Code in conjunction with the common law right to privacy.

Finally, the department argues that claim numbers reflected in the remaining submitted information are excepted from disclosure under section 552.136 of the Government Code. This section states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Having reviewed the remaining submitted information, we find that you have not provided any arguments explaining how any of this information constitutes a credit card, debit card, charge card, or access device number for purposes of section 552.136. Thus, none of the claim numbers at issue may be withheld pursuant to this section.

⁴ As our ruling is dispositive for this information, we need not consider the department's or the third parties' remaining arguments against disclosure.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with the GLB Act and the common law right to privacy. It must release the remaining submitted information

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cary Grace', with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 222035

Enc. Submitted documents

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